IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPEAL NO.509 OF 2005

1. Shivaji Keru Kolape
2. Baba Keru Kolape
Both Agriculturists &
residents of Village: Sangam Mahuli,
Taluka & District Satara. ...Appellants.
V/s.
The State of Maharashtra
through Satara Taluka Police Station ...Respondent.

Shri M.N.Dhamal, adv. for the Appellant.
Mrs.V.R.Bhosale, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 23rd January, 2007.

ORAL JUDGMENT:

1. The appellants, who are original accused nos.1 and 2 in Sessions Case No.22 of 2000, were convicted by the IVth Additional Sessions Judge for the offences punishable under Sections 324 read with Section 34 of the Indian Penal Code and were sentenced R.I. for one year and to pay a fine of Rs.500/- each. The appellant no.1, Shivaji Keru Kolape was also convicted for the offence punishable under Section 304 (II) of the Indian Penal Code and was sentenced to undergo R.I. of 7 years and to pay a fine of Rs.1,000/-. The appellants have challenged the conviction and sentence.

2. To state in brief in all 6 accused persons

including the present appellants were put to trial for the offences punishable under Sections 147, 148, 302, 324 read with Section 149 of the Indian Penal Code. Out of them, accused nos.3 to 6 were acquitted as no case was made out about unlawful assembly with any common object. However, only present appellants were convicted as stated above.

3. The prosecution case in brief is that the deceased Sampat Baba Kolape was resident of Village: Sangam Mahuli, Taluka and District Satara. His wife, sons, daughter and their children also lived together with him. The accused nos.1 and 2 are brothers interse and they also reside near the house of Sampat Kolape. They were also having agricultural land adjoining to land of Sampat. Admittedly, there was a long standing dispute and enmity between the two parties. In 1986 a civil suit was filed by deceased Sampat Kolape and his brother against accused nos.1 and 2 and others for removal of encroachment and possession of part of that land. That suit was decreed against accused nos.1 and 2 by the judgment passed in 1996. Against that Judgment, the defendants/accused nos.1 and 2 had preferred an appeal which is pending. According to the prosecution on 26-5-1999, accused nos.1-Shivaji and no.2-Baba uprooted recently planted mango trees from the land of

Sampat. They also cut down one Babool and one Bhokar tree from the land of Sampat without his consent. About that incident Sampat Kolape lodged a report with the police. Due to this, accused nos.1 and 2 were annoyed. The incident of this case occurred on 28-05-1999 between 5.30 to 5.45 a.m. near the houses of these two parties. According to the prosecution on that day at about 5.30 a.m., Sampat Kolape was present near a hearth for heating water at the shed of his house. At that time, his elder son Sopan alias Tatyaba, P.W.6 came from land at Patkhal carrying milk. Sopan alias Tatyaba went near his father who was in the shed. He saw both accused persons and some ladies from their family standing in front of their house. Therefore, Sopan asked them as to why they had uprooted mango trees and cut other trees from his land. He also told them that he would also uproot and cut trees from their land. On this, accused no.2-Baba Kolape uttered that his father had already made a complaint with the police, so he could do whatever he liked. Saying so, accused no.2-Baba Kolape went inside the house and came back with Shivaji Keru Kolape-accused no.1. The accused no.1 was armed with an axe in his hand and Baba Kolape-accused no.2 was armed with stick in his hand. Accused no.2-Baba Kolape started abusing and beating Sopan/Tatyaba. Sampat Kolape intervened to pacify the accused persons but

accused no.1-Shivaji Kolape firstly gave a blow with the blunt side of an axe on the back of Sampat and immediately, thereafter he gave the second blow on his head with sharp side of an axe. Due to this Sampat suffered bleeding injury on the head and collapsed on the ground. It was alleged that other female accused persons namely, Sangita, Anita, Laxmibai and Mangal also pelted stones and injured Sopan @ Tatyaba, who was sitting down due to beating to him. Sopan also suffered bleeding injury. Rajendra, son of Sampat, called one autorickshaw and Sampat and Sopan both were taken to Civil Hospital, Satara for treatment. Both were examined. Sampat was admitted in the hospital. His statement was also recorded by the police. Initially Crime No.240/1999 was registered for the offences punishable under Section 143, 147, 148, 307 read with Section 149 of the Indian Penal Code. On 29-5-1999 Sampat died because of the head injury and Section 302 came to be added.

4. After investigation, charge-sheet was filed and then the case was committed to the Court of Sessions. Charge was framed by the learned IVth Additional Sessions Judge. All the accused persons pleaded not guilty. It may be noted that the accused have not denied the incident. According to them, Sopan, his

father Sampat and other members of his family were actual aggressors and they had started the attack and in that incident, some of the family members of the accused had suffered injuries. While taking plea of the defence to some extent, it was pleaded that the axe was infact in the hands of P.W.6-Sopan alias Tatyaba and when he was trying to assault one of the accused with the axe, the blade of the axe hit the head of his father Sampat, resulting in the bleeding injury. Thus, according to them, they are not responsible for the fatal wound suffered by Sampat.

5. On behalf of the prosecution, in all 10 witnesses were examined. On behalf of the defence also 3 witnesses were examined.

6. The learned trial Court after hearing the parties rejected the right of private defence pressed on behalf of the accused persons. The learned Trial Court also rejected the contention of the accused persons that the blade of the axe in the hands of Sopan came in contact with the head of the Sampat causing fatal wound. The learned Trial Court also did not accept the contention of the accused persons that Sampat and Sopan and their family members were aggressors. However, the learned Trial Court found that as far as accused

no.2-Baba is concerned, he did not have any intention or knowledge that the death of Sampat would be caused. Therefore, he alongwith accused no.1-Shivaji was convicted for the offence punishable under Section 324 of the Indian Penal Code. The circumstances in which the incident occurred, the learned Trial Court held that there was no intention to cause death and in any case, the incident had occurred abruptly and in the heat of passion. Therefore, accused no.1-Shivaji, who had caused the fatal wound to Sampat, was convicted for the offence of culpable homicide not amounting to murder punishable under Section 304(II) of the Indian Penal Code.

7. There is no dispute that both the parties held agricultural lands adjoining to each other and on account of allegations of encroachment on the land of Sampat, there was long standing enmity between the parties. In 1986 Sampat had filed a civil suit for removal of encroachment and possession of his land against accused nos.1 and 2 and others. That suit came to be decreed in 1996. The defendants therein had preferred an appeal which was pending when this incident occurred. It is also admitted that the houses of both the parties were also quite close to each other. Only a small plot of land admeasuring about 29 X 38 ft.

belonging to one Narayan Kolape and 2 others was between the houses of these two parties. That plot was lying open and as per the spot panchanama proved by the Investigating Officer and P.W.2-Rajendra Rokade. The incident of this case had taken place on that open plot. There is no dispute that on 27-5-1999, Sampat had lodged a report with the police against the accused persons alleging that they had uprooted recently planted mango trees as well as they had cut two other standing trees from his land on 26-5-1999.

8. Evidence of P.W.6- Sopan reveals that he was in his field at Patkhal where he used to look after she-goats. He also came to know about uprooting and cutting of certain trees from the field. He returned home on 28-5-1999 at about 5.30 a.m. with a can of milk. His father Sampat was present in the shed of his house for the purpose of heating water, may be for taking bath. Sopan first went to his father in the shed. Thereafter, he went near some of the accused persons and asked accused no.2-Baba as to why they had uprooted and cut their trees. Not only this, he also uttered that he would also likewise uproot and cut trees from the field of the accused. On this, accused no.2-Baba uttered that his father, Sampat had already lodged a report with the police so he could do whatever

he liked. Saying so, Baba-accused no.2 went inside the house and came alongwith accused no.1-Shivaji. At that time, Shivaji was armed with an axe and accused no.2-Baba was holding a stick. According to Sopan, accused no.2-Baba began to abuse and beat him with stick and his father Sampat came to intervene and pacify the accused persons but accused no.1-Shivaji gave a blow with the blunt side of the axe on the back of Sampat and then he gave second blow with sharp side of the axe on the head of Sampat which caused bleeding injury on the head which proved to be fatal.

9. P.W.7-Muktabai is a married daughter of Sampat. According to her, she was living with her parents. According to her, she was sleeping in her house and her father was firing a hearth for heating water. She deposed that Sopan came from the field with milk of she-goats. She heard sound of abuses and, therefore came out of the house. She also fully corroborated the testimony of her brother Sopan about the incident which had occurred. Both these witnesses deposed that female accused persons including one Mangal had pelted stones causing injuries to Sopan and others. She deposed that accused no.2-Baba had given stick blow over her upper lip. Many people, including police patil, came there and intervened.

10. Evidence on record shows that the after the incident, Rajendra son of Sampat brought one autorickshaw and by that autorickshaw injured Sampat and Sopan were taken to the Civil Hospital, Satara where Sampat was admitted as indoor patient. Evidence of P.W.8-PSI Madane reveals that after getting information of this case, he went to the hospital and recorded statement of Sampat B. Kolape. P.W.9-Dr. Satish Barge, who was medical officer on duty, had examined Sampat and certified that he was conscious and was fit to make a statement. After he made this endorsement on the request letter from PSI Madane, the statement of Sampat came to be recorded . There is no dispute that on the next day Sampat died. In view of the death of Sampat, his statement disclosing the circumstances in which he had suffered the wounds became his dying declaration and accordingly, it was admitted in the evidence as Exhibit 64. That dying declaration fully corroborates version of P.W.6-Sopan and P.W.7-Muktabai about the actual incident. Exhibit 46 is the medical certificate of Sampat, which reveals that for the injuries suffered by him during the assault at about 5.30 a.m. on 28-5-1999, he was brought to the General Hospital, Satara and was examined at about 6.15 a.m. Medical officer Dr.Jadhav noted that Sampat had suffered

following 3 injuries:

1. Vertical incised wound over vertex 10 cm X 3 cm X Bone Deep. Bleeding. Depressed fracture of frontal Bone with Bleeding present.

2. Contusion over interscapular Region of Back, Tenderness present 10 cm X 6 cm.

3. Contusion over (L) Arm & forearm 5 cm X 6 cm. Tenderness present.

Injury No.1 was grievous and could be caused by sharp and cutting weapon. X-Ray report reveals the fracture of frontal bone. Injury Nos.2 and 3 were simple and could be caused by hard and blunt object. This medical certificate was admitted on behalf of the accused. P.M.Report Exhibit 43 reveals that there were sutured vertical linear wound on the frontal region of skull and sutured operational wound over the skull. These two sutured wounds were corresponding to injury no.1 found in the medical certificate Exhibit 46. Third injury was horizontal linear wound on the left scapular region and fourth was contusion over the back in the scapular region. The fracture of the frontal bone corresponding to injury no.1 was confirmed. P.M.Report shows that the cause of death was head injury. P.M.Report was also admitted on behalf of the accused. As such, cause of death of Sampat is not disputed.

11. Exhibit 47 is the medical certificate of

P.W.6-Tatyaba alias Sopan Sampat Kolape. It reveals that he had suffered contused lacerated wound over parieto occipital region, size 6 cm X 3 cm, bone deep. Bleeding was present. Exhibit 49 is the medical certificate of Muktabai which shows that she had suffered contusion over the right eyebrow and tenderness over back. She had not suffered any other injury.

12. On behalf of the accused persons, in all 3 defence witnesses were examined. D.W.1-Dr.Satish Barge, who was also examined as P.W.9, deposed that he had examined accused no.2-Baba on 28-5-1999 and he had found following two injuries:

> 1. Swelling over left cheek of size 5 cm X 4 cm tenderness present.
>
> 2. Abrasion over left forearm lateral aspect of size 5 cm X 1/4 cm X 1/4 cm tenderness present and swelling present.

Accordingly, he issued medical certificate, Exhibit 72. In the cross-examination he deposed that both the injuries were simple and could be caused even by fall while walking.

13. D.W.2- Dr.Jayant Deshpande deposed that on 1-6-1999 accused no.1-Shivaji was brought to him at Civil Hospital, Satara by police and on examination, he

found following 3 injuries:

1. Healed abrasion, 1 cm X 1 cm over right front parietal region.

2. Healed abrasion over right scapular region.

3. Complaints of pains in left deltoid region no injury mark seen.

All these injuries were already healed indicating that they might be 5-6 days old. He issued medical certificate, Exhibit 74.

14. D.W.3-Dr.Dattatraya Darawade was working as a dentist in Sasoon Hospital, Pune. He deposed that on 28-4-1999, Mangal Sopan Jarag, who was one of the accused, was referred to Sasoon Hospital, Pune from Satara Hospital. She was examined by Dr.Chandan Yemun junior of Dr.Dattatraya Darawade. Evidence of Dr.Dattatraya Darawade clearly shows that he himself had not examined Mangal but he deposed on the basis certificate prepared and signed by Dr.Chandan Yemun. As per that certificate, Mangal had suffered injury on the upper lip, which was 3 cm in length. She had lost 3 teeth, one from upper jaw and 2 from lower jaw and there was also fracture in the front segment of upper jaw. If the defence story is true and evidence of Dr.Dattatraya

Darawade based on a certificate is believed, it appears that Mangal must have suffered injury on her mouth which resulted in uprooting of 3 teeth and fracture of jaw. Incidentally, the Doctor, who had examined her and prepared certificate, was not examined as witness before the Court. Mangal herself is also not examined as defence witness. Therefore, it is not clear how she had suffered that injury.

15. For the sake of arguments, even if it is believed that she suffered such injury, the possibility can not be ruled out that she might have suffered such injuries due to pelting of stones at the same time when accused nos.1 and 2 had also suffered small injuries as noted above. None of these injuries suffered by these 3 persons was caused by any sharp or cutting weapon or with any deadly weapon. There is no evidence on record that P.W.6-Sopan or his father, Sampat or any of their family members was armed with any weapon. Prosecution evidence is consistent to show that accused no.2-Baba was holding a stick while accused no.1-Shivaji was armed with an axe and they had assaulted Sopan and Sampat as stated earlier. The learned Trial Court noted that even though on behalf of the accused, an argument was advanced that they had acted in exercise of their private defence but during the cross-examination plea of

the private defence was not taken up seriously. In the cross-examination of P.W.6-Sopan, it was suggested to him that he himself had beaten Baba with the handle of the axe and that when he had raised the axe to beat Baba with its handle and Baba had obstructed it, blade of the axe hit his own father resulting in the injury on head. It indicates that the blade of the axe had come out from the axe and it hit the head of the Sampat resulting in the injury. Taking into consideration nature of the injury and the fracture of the frontal bone, it is impossible to believe that such injury could be caused, merely because blade of the axe came into contact with the head in such manner. For causing such an injury, it requires a strong force of a humanbeing holding that weapon. In view of this, the defence story can not be believed.

16. Mr.Dhamal, the learned counsel for the accused/appellant contended that on the report lodged by accused no.2-Baba, a counter criminal case was registered against Sopan and Sampat and others. Normally it is expected that when there are counter cases arising out of the same incident, they should be tried and disposed off together, though evidence has to be recorded separately. It is not clear why that counter case was not taken up for trial alongwith the

present case. However, merely because counter case was not tried alongwith this case, the accused persons can not be given benefit of doubt. The circumstances clearly show that it was early in the morning when Sopan had come from his field and had brought milk. He immediately went to the accused persons and enquired about uprooting and cutting of the trees from his field and this resulted in the aforesaid incident. There is no reason to believe that when he went to talk with the accused persons, he was armed with any weapon and his intention was to cause injuries to them, therefore, theory of private defence can not be accepted.

17. In view of the circumstances in which the incident occurred, it is clear that due to uprooting and cutting of trees, Sopan had become angry and he enquired from the accused persons about the same and threatened that he would also cut the trees from their fields. This resulted in abusing by Accused no.2-Baba. There is a possibility that exchange of hot words and abuses must have taken place at that stage. Immediately, accused nos.1 and 2 brought the axe and stick from their house. Accused no.2 assaulted Sopan with the stick and caused minor injuries. Accused no.1 also initially gave a blow of with the blunt side of the axe on the back of Sampat, which indicates that his intention was not to cause

death of Sampat. However, in the anger and heat of passion, he gave second blow on the head of Sampat with sharp side of the axe, due to which Sampat collapsed. It is to be noted that no further blow was given by any of the accused persons. In view of these circumstances, the learned trial Court rightly came to a conclusion that the accused no.1-Shivaji alone had committed the offence of culpable homicide not amounting to murder. As far as accused no.2-Baba is concerned, he could be attributed to common intention to cause hurt and, therefore, he alongwith accused no.1-Shivaji was convicted for the offence punishable under Section 324 read with Section 34 of the Indian Penal Code. I find no fault with the conviction.

18. Before concluding, it would be noted that Mr.Dhamal contended that no independent witness was examined by the prosecution. It appears that after the quarrel had commenced, people from the locality including police patil came there and intervened. From the evidence on record, it appears that the whole incident was over within 2-4 minutes. Possibility can not be ruled out that the people from the locality might have come at the end of the incident and, therefore, they could not provide details of the incident. Their evidence could be used as circumstantial evidence only.

In view of the fact that incident is not disputed even by the accused persons, non examination of the independent witnesses from the locality does not make much difference. Presence of Sampat, Sopan and Muktabai is not disputed nor presence of accused nos.1-Shivaji and 2-Baba is disputed. There is no law that evidence of the victims of the offence can not be relied upon to sustain a conviction. It is not the quantity of the witnesses but the quality of the witnesses which should be considered. If the evidence of victim of the offence or his relatives is found to be trustworthy, there is no need for corroboration from independent witnesses nor their evidence can be discarded merely because independent witnesses are not examined. In the present case, evidence of prosecution witnesses appears to be truthful and there is no reason to disbelieve that.

19. Mr.Dhamal also contended that injuries of the accused persons are not explained and, therefore, prosecution evidence becomes doubtful. I am unable to accept this contention. It is to be noted that injuries suffered by accused nos.1 and 2 were very minor, which might not have been even noticed by the prosecution witnesses, particularly because father of these witnesses had suffered a serious bleeding injury on the head due to which he had collapsed and due to which he

finally died. In such circumstances, they were not expected to watch minutely the minor injuries suffered by the accused persons.

20. As far as the sentence for the offence under Section 324 is concerned, I do not find any fault. However, in view of the circumstances in which the incident had occurred and accused no.1 had acted without any premeditation and preparation and in the heat of passion and anger in the abrupt quarrel which had taken place, sentence of R.I. for 7 years appears to be harsh and severe. In my opinion R.I. for 4 years would be just and reasonable. Therefore to that extent appeal may be allowed.

21. For the reasons stated above, the appeal is partly allowed. Conviction of accused nos.1 and 2 for the offence under Section 324 read with 34 of the Indian Penal Code and the sentence awarded on that count is hereby maintained but the sentence awarded to the accused no.1-Shivaji for the offence under Section 304(II) of the Indian Penal Code stands modified as follows:

1. Accused No.1-Shivaji Keru Kolape is hereby sentenced to undergo R.I. for 4 years and to pay a fine

of Rs.1,000/- and in default to pay the fine amount, he shall undergo S.I. for 3 months for the offence punishable under Section 304(II) of the Indian Penal Code.

2. Substantive sentences on both the counts shall run concurrently.

3. Accused No.2-Baba Keru Kolape shall surrender before the learned Trial Court within two weeks to undergo the sentence.

(J.H.Bhatia,J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
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Shri M.N.Dhamal, adv. for the Appellant.

Mrs.V.R.Bhosale, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 23rd January, 2007.

P.C.:

OPERATIVE ORDER

1. For the reasons stated in the judgment, the appeal is partly allowed. Conviction of accused nos.1 and 2 for the offence under Section 324 read with 34 of the Indian Penal Code and the sentence awarded on that count is hereby maintained but the sentence awarded to accused no.1-Shivaji stands modified as follows:

2. Accused No.1-Shivaji Keru Kolape is hereby sentenced to undergo R.I. for 4 years and to pay a fine

of Rs.1,000/- and in default to pay a fine amount, he shall undergo S.I. for 3 months for the offence punishable under Section 304(II) of the Indian Penal Code.

3. Substantive sentences on both the counts shall run concurrently.

4. Accused No.2-Baba Keru Kolape shall surrender before the learned Trial Court to undergo sentence within two weeks.

(J.H.Bhatia,J.)